

REMARKS

Favorable consideration and allowance are respectfully requested for claims 1 and 6-31 in view of the following remarks.

The rejection of claims 30 and 31 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite, is respectfully traversed.

The relevant question for purposes of definiteness is whether one of skill in the art could understand the scope of the claim. The MPEP states that:

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000).

Claim 30 is amended to clarify that the device for cleaning an installation for the production or processing of foodstuffs or pharmaceuticals of claim 1 is within the interior space of the installation. As such, a person of skill in the art would readily understand that the device is located within the interior space of the installation. Further, the language of the claim clarifies that the conveyor belt is arranged to convey foodstuffs within the interior space. Accordingly, the relationships between these elements would be clear to a person of skill in the art. Claim 31 requires that the installation is a system for freezing foodstuffs and adds an entry system for a refrigerating agent. The Office Action did not suggest that any of the language in this claim is indefinite.

Accordingly, the test for definiteness is met, because one of skill in the art would readily understand the scope of claims 30 and 31. As a result, one of skill in the art could readily determine whether or not some activity constitutes

infringement of these claims. Reconsideration and withdrawal of this rejection are therefore respectfully requested.

35 U.S.C. § 102(b)

The rejection of claims 1 – 3, 6 – 7, 9, 14, and 16 as anticipated by Hallet et al. (EP 0 958 849) is respectfully traversed.

These claims relate to a device for cleaning an installation for the production or processing of foodstuffs or pharmaceuticals comprising a cleaning unit adapted to clean essentially the whole inside surface of the installation, a parked position for the cleaning unit which allows for the production or processing foodstuffs or pharmaceuticals and a flexible connection to supply cleaning agent to the cleaning unit.

Claim 1 is amended to recite that the parked position comprises a plate. Support for this amendment may be found in the specification as originally filed, for instance in paragraph [0033]. Claim 1 is also amended to incorporate the limitations of previously-pending claims 2-4. Claims 2-4 are cancelled, without prejudice and without disclaimer of the subject matter therein.

Hallet relates to water treatment and cannot anticipate the present claims which are directed to installations and devices for use in the production or processing of foodstuffs or pharmaceuticals. The claims are limited in both the preamble and the language which indicates that the cleaning unit is adapted to clean essentially the whole inside surface of the installation where the production or processing of foodstuffs or pharmaceuticals takes place. Hallet cannot and does not meet these claim limitations.

Further, Hallet does not teach a parked position in the interior of the installation, much less a parked position configured so that the cleaning unit may be parked during production or processing of foodstuffs or pharmaceuticals or a parked position comprising a plate. Because Hallet relates to water treatment,

there would be no need to provide a parked position that would avoid any cleaning solution contamination to the foodstuffs or pharmaceuticals being treated. The Office Action asserts that this claim element is met because the cleaning unit of Hallet may be parked within the settler (100). This does not meet the limitations of claim 1, as amended, since the parked position must be such that the cleaning unit may be parked thereon during production or processing of foodstuffs or pharmaceuticals. Hallet provides no feature which is such that the cleaning unit may be parked thereon during production. Further, claim 9 clarifies that the parked position is useful to prevent contamination of the foodstuffs or pharmaceuticals with cleaning agent. Hallet provides no such teaching. The conclusory assertion in the Office Action that a cleaning unit may be parked in the device of Hallet reflects a hindsight review of Hallet, as the reference simply does not suggest a parked position for the cleaning unit during normal operation (not the cleaning process).

Moreover, Hallet teaches a cleaning device that is useful for cleaning only a small part, the lamellae, and not the inside surface of the settler. The presently claimed invention, on the other hand, relates to a device useful for cleaning essentially the whole inside surface of the installation. Thus, rather than cleaning only a part of the device, the presently claimed invention relates to a cleaning device that cleans the inside surfaces of the device.

Finally, Hallet does not disclose a cleaning unit with at least one nozzle configured to output a cleaning agent and at least one nozzle tip configured to output a cleaning agent wherein said nozzle tip is configured to be actuated in a rotational movement by a flow of cleaning agent as is presently claimed.

Claims 6-7, 9, 14 and 16 all depend from claim 1 and include the limitations thereof. Accordingly, Hallet fails to teach each and every element of the claims, as amended, and the anticipation rejection cannot be properly maintained. Reconsideration and withdrawal thereof are respectfully requested.

35 U.S.C. § 103(a)

The rejection of claim 4 over Hallet et al. (EP 0 958 849) in view of Horridge (6,402,854) is respectfully traversed. The elements of previously pending claim 4 now appear in claim 1.

As explained above, the primary reference (Hallet) fails to teach all of the limitations of claim 1. The secondary reference (Horridge) does not make up for this failure of Hallet to teach all the elements of claim 1. Accordingly, the proposed combination of references fails to disclose or suggest all of the elements of the claimed invention.

Further, the present record includes no explanation of why one of skill in the art would be motivated to try to combine the two references. As explained above, Hallet is directed to cleaning lamellar elements, not inside surfaces. If one were to modify Hallet to include rotatable nozzles so as to clean inside surfaces of an installation, the cleaning effect on the lamellar elements would be lessened, if not destroyed entirely. The patent laws recognize that a proposed modification is improper if it would destroy the intended function of the item being modified. Indeed, the MPEP includes a subsection entitled "The Proposed Modification Cannot Render the Prior Art Unsatisfactory for Its Intended Purpose" see § 2143.01.

Not only would the proposed modification of Hallet either destroy the intended functionality of or at least render less effective the device of Hallet, there is no motivation for one of skill to try such a modification. Absent such a suggestion or motivation, proper obviousness rejection cannot be maintained.

Finally, even assuming, *arguendo*, that one of skill in the art were to try to combine the references. The Office Action asserts that the limitations of previously pending claim 4 (which now appear in claim 1) are disclosed in col. 2, lines 15-17) of Horridge. This section of Horridge does not, however disclose a

nozzle or nozzle tip configured to be actuated in a rotational movement by a flow of cleaning agent as is presently claimed. Rather, the reference merely indicates that the nozzle is rotatable. Reconsideration and withdrawal of this rejection are therefore respectfully requested.

The rejections of claims 8, 10 – 13, 15 and 17 – 26 over Hallet et al. (EP 0 958 849) in view of Vowles (5,265,671) and further in view of Smith (5,402,809) is respectfully traversed are respectfully traversed.

Vowles is offered as teaching a driving gear connected to a cleaning unit with a power transmission element, and a roller connected to the driving gear. Even assuming, *arguendo*, that Vowles does teach the claimed guide system and driving gear, the reference does not make up for the failure of the primary reference to teach all of the elements of claim 1, as explained above. Without a teaching of each and every element, a proposed combination of references fails to render a claim obvious. Because the proposed combination fails to teach all of the elements of claim 1, the combination cannot render obvious claims 10-11, 15 and 17-26 which depend from claim 1.

Claim 12 indicates that the power transmission element of claim 10 is a chain and claim 13 defines the chain as a non-lubricated steel chain.

Smith is offered as teaching the use of a stainless steel chain in a conveyor assembly. Smith does not make up for the failure of the primary reference to teach all of the elements of claim 1, as explained above. Without a teaching of each and every element, a proposed combination of references fails to render a claim obvious. Because the proposed combination fails to teach all of the elements of claim 1, the combination cannot render obvious claims 12 and 13, which depend from claim 1. Reconsideration and withdrawal of these rejections are therefore respectfully requested.

The rejection of claims 30 and 31 over Hallet et al. (EP 0 958 849) in view of Niederer, Jr. et al. (3,155,102) is respectfully traversed. Claims 30 and 31 are dependant (directly or indirectly) from claim 1 and include all of the limitations thereof.

As explained above, the primary reference (Hallet) fails to teach all of the limitations of claim 1. The secondary reference (Niederer) does not make up for this failure of Hallet to teach all the elements of claim 1. Accordingly, the proposed combination of references fails to disclose or suggest all of the elements of the claimed invention. Reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

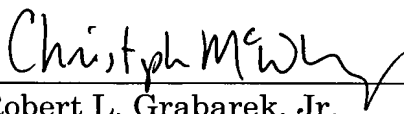
In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 038724.52864US).

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